

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 284
94TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, February 1, 2007, with recommendation that the Senate Committee Substitute do pass.

0368S.04C

TERRY L. SPIELER, Secretary.

AN ACT

To amend chapters 67 and 386, RSMo, by adding thereto twenty-one new sections relating to the provision of video services, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapters 67 and 386, RSMo, are amended by adding thereto
2 twenty-one new sections, to be known as sections 67.2675, 67.2677, 67.2679,
3 67.2681, 67.2683, 67.2685, 67.2687, 67.2689, 67.2691, 67.2692, 67.2693, 67.2695,
4 67.2701, 67.2703, 67.2705, 67.2707, 67.2709, 67.2711, 67.2714, 67.2715, and
5 386.305, to read as follows:

**67.2675. Sections 67.2675 to 67.2715 shall be known and may be
2 cited as the "2007 Video Services Providers Act".**

**67.2677. For purposes of sections 67.2675 to 67.2715, the following
2 terms mean:**

3 **(1) "Cable operator", as defined in 47 U.S.C. Section 522(5);**

4 **(2) "Cable system", as defined in 47 U.S.C. Section 522(7);**

5 **(3) "Franchise", an initial authorization, or renewal of an
6 authorization, issued by a franchising entity, regardless of whether the
7 authorization is designated as a franchise, permit, license, resolution,
8 contract, certificate, agreement, or otherwise, that authorizes the
9 provision of video service and any affiliated or subsidiary agreements
10 related to such authorization;**

11 **(4) "Franchise area", the total geographic area authorized to be
12 served by an incumbent cable operator in a political subdivision as of
13 the effective date of sections 67.2675 to 67.2715 or, in the case of an
14 incumbent local exchange carrier, as such term is defined in 47 U.S.C.
15 Section 251(h), or affiliate thereof, the area within such political**

16 subdivision in which such carrier provides telephone exchange service;
17 (5) "Franchise entity", a political subdivision that was entitled to
18 require franchises and impose fees on cable operators on the day before
19 the date of enactment of sections 67.2675 to 67.2715, provided that only
20 one political subdivision may be a franchise entity with regard to a
21 geographic area;

22 (6) (a) "Gross revenues", limited to amounts billed to video
23 service subscribers or received from advertisers for the following:

24 a. Recurring charges for video service;

25 b. Event-based charges for video service, including but not
26 limited to pay-per-view and video-on-demand charges;

27 c. Rental of set top boxes and other video service equipment;

28 d. Service charges related to the provision of video service,
29 including but not limited to activation, installation, repair, and
30 maintenance charges;

31 e. Administrative charges related to the provision of video
32 service, including but not limited to service order and service
33 termination charges; and

34 f. A pro rata portion of all revenue derived, less refunds, rebates,
35 or discounts, by a video service provider for advertising over the video
36 service network to subscribers within the franchise area where the
37 numerator is the number of subscribers within the franchise area, and
38 the denominator is the total number of subscribers reached by such
39 advertising;

40 (b) Gross revenues do not include:

41 a. Discounts, refunds, and other price adjustments that reduce
42 the amount of compensation received by an entity holding a video
43 service authorization;

44 b. Uncollectibles;

45 c. Late payment fees;

46 d. Amounts billed to video service subscribers to recover taxes,
47 fees, or surcharges imposed on video service subscribers or video
48 service providers in connection with the provision of video services,
49 including the video service provider fee authorized by this section;

50 e. Fees or other contributions for PEG or I-Net support; or

51 f. Charges for services other than video service that are
52 aggregated or bundled with amounts billed to video service

53 subscribers, if the entity holding a video service authorization
54 reasonably can identify such charges on books and records kept in the
55 regular course of business or by other reasonable means;

56 (c) Except with respect to the exclusion of the video service
57 provider fee, gross revenues shall be computed in accordance with
58 generally accepted accounting principles;

59 (7) "Household", an apartment, a house, a mobile home, or any
60 other structure or part of a structure intended for residential
61 occupancy as separate living quarters;

62 (8) "Incumbent cable operator", the cable service provider
63 serving cable subscribers in a particular franchise area on September
64 1, 2007;

65 (9) "Low income household", a household with an average annual
66 household income of less than thirty-five thousand dollars as
67 determined by the most recent decennial census;

68 (10) "Person", an individual, partnership, association,
69 organization, corporation, trust, or government entity;

70 (11) "Political subdivision", a city, town, village, county;

71 (12) "Public right-of-way", the area of real property in which a
72 political subdivision has a dedicated or acquired right-of-way interest
73 in the real property, including the area on, below, or above the present
74 and future streets, alleys, avenues, roads, highways, parkways, or
75 boulevards dedicated or acquired as right-of-way and utility easements
76 dedicated for compatible uses. The term does not include the airwaves
77 above a right-of-way with regard to wireless telecommunications or
78 other non-wire telecommunications or broadcast service;

79 (13) "Video programming", programming provided by, or
80 generally considered comparable to programming provided by, a
81 television broadcast station, as set forth in 47 U.S.C. Section 522(20);

82 (14) "Video service", the provision of video programming
83 provided through wireline facilities located at least in part in the
84 public right-of-way without regard to delivery technology, including
85 Internet protocol technology whether provided as part of a tier, on
86 demand, or a per channel basis. This definition includes cable service
87 as defined by 47 U.S.C. Section 522(6), but does not include any video
88 programming provided by a commercial mobile service provider
89 defined in 47 U.S.C. Section 332(d), or any video programming provided

90 solely as part of and via a service that enables users to access content,
91 information, electronic mail, or other services offered over the public
92 Internet;

93 (15) "Video service authorization", the right of a video service
94 provider or an incumbent cable operator, that secures permission from
95 the public service commission pursuant to sections 67.2675 to 67.2715,
96 to offer video service to subscribers in a political subdivision;

97 (16) "Video service network", wireline facilities, or any
98 component thereof, located at least in part in the public right-of-way
99 that deliver video service, without regard to delivery technology,
100 including Internet protocol technology or any successor
101 technology. The term "video service network" shall include cable
102 systems;

103 (17) "Video service provider", any person that distributes video
104 service through a video service network pursuant to a video service
105 authorization;

106 (18) "Video service provider fee", the fee imposed under section
107 67.2689 or section 67.2703.

67.2679. 1. The general assembly finds and declares it to be the
2 policy of the state of Missouri that there be competition on a fair and
3 equal basis among all providers of video programming. Therefore,
4 allowing incumbent cable operators the option to secure a video service
5 authorization as provided under sections 67.2675 to 67.2715 is an
6 essential element of this chapter. Such a process for securing a video
7 service authorization best promotes the substantial interest of the state
8 of Missouri in facilitating a competitive marketplace that will, in turn,
9 encourage investment and the deployment of new and innovative
10 services in political subdivisions and provide benefits to the citizens of
11 this state. The general assembly further finds and declares that
12 franchise entities will benefit from immediate availability of the state-
13 issued video service authorization to all video service providers,
14 including new entrants and incumbent cable operators. In addition to
15 the benefits to franchise entities found in sections 67.2677 to 67.2715,
16 this immediate availability of state-issued video service authorizations
17 will promote fair competition among all video service providers in a
18 local market and thereby provide new revenues to political
19 subdivisions derived from additional video service customers and the

20 purchase of additional video services by such customers. This policy
21 will provide a more predictable source of funding for franchise entities
22 which will continue beyond the natural terms of all existing franchise
23 agreements. The franchise entities will also experience cost savings
24 associated with the administrative convenience of the enactment of the
25 state-issued video service authorization. These benefits are full and
26 adequate consideration to franchise entities, as the term
27 "consideration" is used in article III, section 39(5) of the Missouri
28 Constitution.

29 2. Except to the extent expressly set forth herein, upon issuance
30 of a video service authorization, any existing or future franchise or
31 ordinance adopted by a franchise entity that purports to regulate video
32 service or video service networks or the franchising of video service
33 providers shall be preempted as applied to such video service provider.

34 3. No person shall commence providing video service or
35 commence construction of a video service network in any area until
36 such person has obtained a state-issued video service authorization,
37 under the provisions of sections 67.2675 to 67.2715.

38 4. The public service commission shall have the exclusive
39 authority to authorize any person to construct or operate a video
40 service network or offer video service in any area of this
41 state. Notwithstanding provisions of this section to the contrary, a
42 person with an existing and valid authorization to occupy the public
43 rights-of-way may construct a video service network without first
44 obtaining a video service authorization, but such person must obtain
45 a video service authorization prior to commencing the provision of
46 video service and otherwise comply with the provisions of sections
47 67.2675 to 67.2715. For purposes of the federal Cable Act, 47 U.S.C. 521,
48 et seq., the rules and regulations of the Federal Communications
49 Commission, and all applicable state laws and regulations, the public
50 service commission shall be considered the sole franchising authority
51 for the state, except with respect to a person that continues to provide
52 video service under a franchise, franchise extension, or expired
53 franchise or ordinance previously granted by a franchise entity. The
54 public service commission shall have no authority to regulate the rates,
55 terms, and conditions of video service, except to the extent explicitly
56 provided under sections 67.2675 to 67.2715.

57 5. Any person seeking to commence providing video service in
58 this state shall file an application for a video service authorization
59 covering a franchise area or franchise areas with the public service
60 commission and provide written notice to the affected political
61 subdivisions of its intent to provide video service. The public service
62 commission shall make such application public by posting a copy of the
63 application on its website within three days of filing.

64 6. A holder of a video service authorization who seeks to include
65 additional political subdivisions to be served must file with the public
66 service commission a notice of change to its video service authorization
67 that reflects the additional political subdivisions to be served.

68 7. The public service commission shall issue a video service
69 authorization allowing the video service provider to offer video service
70 in the franchise area of each political subdivision set forth in the
71 application within thirty days of receipt of an affidavit submitted by
72 the applicant and signed by an officer or general partner of the
73 applicant affirming the following:

74 (1) That the video service authorization holder agrees to comply
75 with all applicable federal and state laws and regulations;

76 (2) A list of political subdivisions to be served by the applicant;

77 (3) The location of the principal place of business and the names
78 of the principal executive officers of the applicant;

79 (4) That the video service provider has filed or will timely file
80 with the Federal Communications Commission all forms required by
81 that agency prior to offering video service;

82 (5) That the video service provider agrees to comply with all
83 applicable regulations concerning use of the public rights-of-way as
84 provided in sections 67.1830 to 67.1846; and

85 (6) That the video service provider is legally, financially, and
86 technically qualified to provide video service.

87 8. The video service authorization issued by the public service
88 commission shall contain the following:

89 (1) A grant of authority to provide video service in the franchise
90 area of each political subdivision set forth in the application; and

91 (2) A grant of authority to construct a video service network
92 along, across or on public rights-of-way for the delivery of video service
93 to the extent the video service provider or an affiliate did not

94 otherwise possess a valid authorization to occupy the public rights-of-
95 way.

96 9. (1) No existing franchise or ordinance issued by a franchising
97 entity shall be renewed or extended beyond the expiration date of such
98 franchise. Any person providing video service under a franchise,
99 franchise extension or expired franchise or ordinance previously
100 granted by a franchise entity may, at its option:

101 (a) Continue to provide service under the terms and conditions
102 of such franchise, franchise extension, or ordinance; or

103 (b) Apply for a video service authorization as provided under
104 section 67.2679 in lieu of any or all such franchises, franchise
105 extensions, or expired franchises; or

106 (c) Automatically convert the franchise, franchise extension, or
107 expired franchise in a political subdivision into a state-issued video
108 service authorization, any time after a video service provider other
109 than an incumbent cable operator obtains a video service authorization
110 for such political subdivision, provided that notice of the automatic
111 conversion to the public service commission and the affected political
112 subdivision is made and upon compliance with the provisions of
113 sections 67.2675 to 67.2715;

114 (2) The franchise, franchise extension, or expired franchise
115 previously granted by the franchise entity will terminate upon issuance
116 of a video service authorization to the video service provider. The
117 terms of such video service authorization shall be as provided under
118 the provisions of sections 67.2675 to 67.2715 and shall supersede the
119 terms and conditions of the franchise, franchise extension, or expired
120 franchise previously granted by the franchise entity.

121 10. At the time that any video service authorization is issued by
122 the public service commission, the public service commission shall
123 immediately make such issuance public by posting information on its
124 website relating to the video service authorization, including
125 specifically all political subdivisions covered by that authorization and
126 the video service provider fee imposed.

67.2681. No franchise entity or other political subdivision of the
2 state of Missouri except the public service commission shall either
3 require a person holding a video service authorization to obtain a
4 separate franchise to provide video service or otherwise impose any

5 fee, license, gross receipt tax, or franchise requirement on the
6 provision of any video service, or request anything of value in exchange
7 for providing video services except as provided in sections 67.1830 to
8 67.1846 or in sections 67.2689 and 67.2703. For purposes of this section,
9 a franchise requirement includes, without limitation, any provision
10 regulating rates charged by an entity holding a video service
11 authorization or requiring such entity to satisfy any build-out
12 requirements or deploy any facilities or equipment. Except with
13 respect to the construction of a video service network, a certificate or
14 franchise issued to a telecommunications company to construct and
15 operate telecommunications facilities to provide telecommunications
16 service in the public rights-of-way shall not constitute a video service
17 authorization for purposes of sections 67.2675 to 67.2715.

67.2683. A video service provider shall comply with all Federal
2 Communications Commission requirements involving the distribution
3 and notification of emergency messages over the emergency alert
4 system applicable to cable operators. A video service provider other
5 than an incumbent cable operator serving a majority of the residents
6 within a political subdivision shall comply with this section by
7 December 31, 2007.

67.2685. A video service authorization shall expire upon notice
2 to the public service commission by the holder of a video service
3 authorization that it will cease to provide video service under such
4 authorization.

67.2687. An entity holding a video service authorization shall
2 provide notice to each political subdivision with jurisdiction in any
3 locality at least ten days before commencing video service in the
4 political subdivision's jurisdiction.

67.2689. 1. A franchise entity may collect a video service
2 provider fee equal to not more than five percent of the gross revenues
3 from each video service provider providing video service in the
4 geographic area of such franchise entity. The video service provider
5 fee shall apply equally to all video service providers within the
6 geographic area of a franchise entity.

7 2. Except as otherwise expressly provided in sections 67.2675 to
8 67.2715, neither a franchise entity nor any other political subdivision
9 shall demand any additional fees, licenses, gross receipt taxes, or

10 charges on the provision of video services by a video service provider
11 and shall not demand the use of any other calculation method.

12 3. All video service providers providing service in the geographic
13 area of a franchise entity shall pay the video service provider fee at the
14 same percent of gross revenues as had been assessed on the incumbent
15 cable operator by the franchise entity immediately prior to the date of
16 enactment of sections 67.2675 to 67.2715, and such percentage shall
17 continue to apply until the date that the incumbent cable operator's
18 franchise existing at that time expires or would have expired if it had
19 not been terminated pursuant to sections 67.2675 to 67.2715. The
20 franchise entity shall notify the applicant for a video service
21 authorization of the applicable gross revenue fee percentage within
22 thirty days of the date notice of the applicant is provided.

23 4. Not more than once per calendar year after the date that the
24 incumbent cable operator's franchise existing on the effective date of
25 sections 67.2675 to 67.2715 expires or would have expired if it had not
26 been terminated pursuant to sections 67.2675 to 67.2715, or in any
27 political subdivision where no franchise applied on the date of
28 enactment of sections 67.2675 to 67.2715, no more than once per
29 calendar year after the video service provider fee was initially
30 imposed, a franchise entity, may, upon ninety days notice to all video
31 service providers, elect to adjust the amount of the video service
32 provider fee subject to state and federal law, but in no event shall such
33 fee exceed five percent of a video service provider's gross revenue.

34 5. The video service provider fee shall be paid to each franchise
35 entity requiring such fee on or before the last day of the month
36 following the end of each calendar quarter and shall be calculated as
37 a percentage of gross revenues, as defined under section 67.2677. Any
38 payment made pursuant to subsection 8 of section 67.2703 shall be made
39 at the same time as the payment of the video service provider fee.

40 6. Any video service provider may identify and collect the
41 amount of the video service provider fee and collect any support under
42 subsection 8 of section 67.2703 as separate line items on subscriber
43 bills.

67.2691. 1. A franchise entity shall have the authority to audit
2 any video service provider, which provides video service to subscribers
3 within the geographic area of the franchise entity, not more than once

4 per calendar year.

5 2. A video service provider shall, upon request of the franchise
6 entity conducting an audit, make available at the location where such
7 records are kept in the normal course of business for inspection by the
8 franchise entity all records pertaining to gross revenues received from
9 the provision of video services provided to consumers located within
10 the geographic area of the franchise entity.

11 3. Any expenses incurred by a franchise entity in conducting an
12 audit of an entity holding a video service authorization shall be paid
13 by the franchise entity.

14 4. Any suit with respect to a dispute arising out of or relating to
15 the amount of the video service provider fee allegedly due to a
16 franchise entity under section 67.2689 shall be filed by the franchise
17 entity seeking to recover an additional amount alleged to be due, or by
18 a video service provider seeking a refund of an alleged overpayment,
19 in a court of competent jurisdiction within two years following the end
20 of the quarter to which the disputed amount relates. Any payment that
21 is not challenged by a franchise entity within two years after it is paid
22 or remitted shall be deemed accepted in full payment by the franchise
23 entity.

24 5. A franchise entity shall not employ, appoint, or retain any
25 person or entity for compensation that is dependent in any manner
26 upon the outcome of an audit of a holder of video service authorization,
27 including, without limitation, the audit findings or the recovery of fees
28 or other payment by the municipality or county. A person may not
29 solicit or accept compensation dependent in any manner upon the
30 outcome of any such audit, including, without limitation, the audit
31 findings or the recovery of fees or other payment by the political
32 subdivision or video service provider.

33 6. A video service provider shall not be required to retain
34 financial records associated with the payment of the video service
35 provider fee for longer than three years following the end of the
36 quarter to which such payment relates, unless a franchise entity has
37 commenced a dispute regarding such payment in accordance with this
38 section.

 67.2692. 1. Upon ninety days notice, a franchise entity may
2 require a video service provider to adopt the customer service

3 requirements provided in 47 C.F.R. Section 76.309(c) in its provision of
4 video service. The state of Missouri and the public service commission
5 shall not have the power to enact or adopt customer service
6 requirements specifically applicable to the provision of video service.

7 2. No video service provider shall be subject to customer service
8 requirements if it is subject to effective competition, as the term
9 "effective competition" is defined in 47 C.F.R. Section 76.905, in such
10 franchise area. Following mediation, any party may file suit in an
11 appropriate court based on the protections set forth in this section.

12 3. A video service provider shall implement an informal process
13 for handling inquiries from franchise entities and customers
14 concerning billing issues, service issues, and other complaints. In the
15 event an issue is not resolved through this informal process, a
16 franchising entity may request a confidential non-binding mediation
17 with the video service provider, with the costs of such mediation to be
18 shared equally between the franchising entity and the video service
19 provider.

20 4. Each video service provider shall maintain a local or toll free
21 telephone number for customer service contact.

67.2693. The public service commission shall, no later than
2 August 28, 2008, and annually thereafter for the next three years, issue
3 a report regarding developments resulting from the implementation of
4 sections 67.2675 to 67.2715 and shall make such recommendations to the
5 general assembly as it deems appropriate to benefit consumers. The
6 commission shall conduct proceedings as it deems appropriate to
7 prepare its report, including receiving comments from members of the
8 public.

67.2695. 1. An entity holding a video service authorization shall,
2 at its sole cost and expense, indemnify, hold harmless, and defend a
3 political subdivision, its officials, boards, board members, commissions,
4 commissioners, agents, and employees, against any and all claims, suits,
5 causes of action, proceedings, and judgments for damages or equitable
6 relief arising out of:

7 (1) The construction, maintenance, or operation of its video
8 service network;

9 (2) Copyright infringements or a failure by an entity holding a
10 video service authorization to secure consents from the owners,

11 authorized distributors, or licensees of programs to be delivered by the
12 video service network.

13 2. Any indemnification provided in subsection 1 of this section
14 shall include, but not be limited to, the political subdivision's
15 reasonable attorneys' fees incurred in defending against any such
16 claim, suit, or proceeding prior to the entity holding the video service
17 authorization assuming such defense. The political subdivision shall
18 notify the entity holding the video service authorization of claims and
19 suits within seven business days of its actual knowledge of the
20 existence of such claim, suit, or proceeding. Failure to provide such
21 notice shall relieve the entity holding the video service authorization
22 of its obligations under this section. Once the entity holding the video
23 service authorization assumes the defense of any such action, the
24 political subdivision may, at its option, continue to participate in the
25 defense at its own expense.

26 3. The obligation to indemnify, hold harmless, and defend
27 contained in subsections 1 and 2 of this section shall not apply to any
28 claim, suit, or cause of action related to the provision of public,
29 educational, and governmental channels or programming or to
30 emergency interrupt service announcements.

67.2701. A video service authorization is fully transferable, with
2 respect to one or more political subdivisions covered by such
3 authorization, to any successor-in-interest to the holder whether such
4 successor-in-interest arises through merger, sale, assignment,
5 restructuring, change of control, or any other type of transaction. A
6 notice of transfer shall be promptly filed with the public service
7 commission and the affected political subdivisions upon completion of
8 such transfer, but neither the public service commission nor any
9 political subdivision shall have any authority to review or require
10 approval of any transfer of a video service authorization, regardless of
11 whether the transfer arises through merger, sale, assignment,
12 restructuring, change of control, or any other type of transaction.

67.2703. 1. A franchise entity may require a video service
2 provider providing video service in such franchise entity to designate
3 up to three channels for non-commercial public, educational, or
4 governmental "PEG" use if such franchise entity has a population of at
5 least fifty thousand, and up to two PEG channels if such franchise

6 entity has a population of less than fifty thousand; provided, however,
7 that such limits shall constitute the total number of PEG channels that
8 may be designated on all video service networks that share a common
9 headend, regardless of the number of franchise entities or other
10 political subdivisions served by such headend, and the populations of
11 all political subdivisions served by such video service networks shall
12 be aggregated for purposes of applying these limits. The video service
13 provider may provide such channels on any service tier that is
14 purchased by more than fifty percent of its customers. All video service
15 providers serving a political subdivision shall be required to provide
16 the same number of PEG access channels.

17 2. Notwithstanding any franchise or ordinance granted by a
18 franchise entity prior to the date of enactment of sections 67.2675 to
19 67.2715, this section, rather than the franchise or ordinance, shall apply
20 to the designation of PEG access channels by an incumbent cable
21 operator operating under such franchise or ordinance; provided,
22 however, that if such franchise or ordinance requires fewer PEG access
23 channels than the applicable limit specified in subsection 1 of this
24 section, the requirement in the franchise or ordinance shall apply in
25 lieu of such limit; provided further, that the incumbent cable operator
26 may nonetheless be required to activate additional PEG channel or
27 channels, up to such limit, to the extent the political subdivision
28 certifies that such additional channel or channels will be substantially
29 utilized, as defined in subsection 4 of this section.

30 3. Any PEG channel designated pursuant to this section that is
31 not substantially utilized, as defined in subsection 4 of this section, by
32 the franchise entity shall no longer be made available to the franchise
33 entity, but may be programmed at the video service provider's
34 discretion. At such time as the governing body of a franchising entity
35 makes a finding and certifies that a channel that has been reclaimed by
36 a video service provider under this subsection will be substantially
37 utilized, the video service provider shall restore the reclaimed channel
38 within one hundred and twenty days, but shall be under no obligation
39 to carry that channel on any specific tier.

40 4. For purposes of this section, a PEG channel shall be
41 considered "substantially utilized" when eight hours are locally
42 programmed on that channel each calendar day for at least three

43 consecutive months. In determining whether a PEG channel is
44 substantially utilized, a program may be shown not more than four
45 times during a calendar week.

46 5. Except as provided in this section, a franchise entity or
47 political subdivision may not require a video service provider to
48 provide any funds, services, programming, facilities, or equipment
49 related to public, educational, or governmental use of channel
50 capacity. The operation of any PEG access channel provided pursuant
51 to this section and the production of any programming that appears on
52 each such channel shall be the sole responsibility of the franchise
53 entity receiving the benefit of such channel, and the video service
54 provider shall bear only the responsibility for the transmission of the
55 programming on each such channel to subscribers.

56 6. The franchise entity must ensure that all transmissions of
57 content and programming provided by or arranged by it to be
58 transmitted over a PEG channel by a video service provider are
59 delivered and submitted to the video service provider in a manner or
60 form that is capable of being accepted and transmitted by such video
61 service provider holder over its network without further alteration or
62 change in the content or transmission signal, and which is compatible
63 with the technology or protocol utilized by the video service provider
64 to deliver its video services.

65 7. The franchise entity shall make the programming of any PEG
66 access channel available to all video service providers in such franchise
67 entity in a nondiscriminatory manner. Each video service provider
68 shall be responsible for providing the connectivity to the franchise
69 entity's PEG access channel distribution point. Where technically
70 necessary and feasible, video service providers in the same franchise
71 entity shall use reasonable efforts and shall negotiate in good faith to
72 interconnect their video service networks on mutually acceptable rates,
73 terms, and conditions for the purpose of transmitting PEG
74 programming within such franchise entity. A video service provider
75 shall have no obligation to provide such interconnection at more than
76 one point per headend, regardless of the number of franchise entities
77 or other political subdivisions served by such headend. The entity
78 requesting interconnection shall be responsible for any costs associated
79 with such interconnection, including signal transmission from the

80 origination point to the point of interconnection. Interconnection may
81 be accomplished by direct cable microwave link, satellite, or other
82 reasonable method of connection acceptable to the entity providing the
83 interconnect.

84 8. (1) The obligation of an incumbent cable operator to provide
85 monetary and other support for PEG access facilities contained in a
86 franchise existing on the effective date of sections 67.2675 to 67.2715
87 shall continue until the term of the franchise would have expired if it
88 had not been terminated pursuant to sections 67.2675 to 67.2715 or until
89 January 1, 2009, whichever is earlier.

90 (2) Each video service provider providing video service in a
91 political subdivision shall have the same obligation to support PEG
92 access facilities as the incumbent cable operator with the most
93 subscribers in such political subdivision as of the date of enactment of
94 sections 67.2675 to 67.2715. To the extent such incumbent cable
95 operator provides such support in the form of a percentage of gross
96 revenue or a per subscriber fee, any other video service provider shall
97 pay the same percentage of gross revenue or per subscriber fee as the
98 incumbent cable operator. To the extent the incumbent cable operator
99 provides such support in the form of a lump sum payment without an
100 offset to its gross receipts fee, any other video service provider shall be
101 responsible for a pro rata share of such payment made by the
102 incumbent cable operator after the date on which the other video
103 service provider commences service in a particular political
104 subdivision, based on its proportion of video service customers in such
105 political subdivision. To the extent the incumbent cable operator
106 provides such support on an in-kind basis after the date on which the
107 other video service provider commences service in a particular
108 political subdivision, any other video service provider shall pay the
109 political subdivision a sum equal to the pro rata amount of the fair
110 market value of such support based on its proportion of video service
111 customers in such political subdivision.

112 (3) For purposes of this section, the proportion of video service
113 customers of a video service provider shall be determined based on the
114 relative number of subscribers as of the end of the prior calendar year
115 as reported by all incumbent cable operators and holders of video
116 service authorizations. A franchising entity acting under this

117 subsection shall notify a video service provider of the amount of such
118 fee on an annual basis, beginning one year after issuance of the video
119 service authorization.

120 9. Neither the public service commission nor any political
121 subdivision may require a video service provider to provide any
122 institutional network or equivalent capacity on its video service
123 network. The obligation of an incumbent cable operator to provide
124 such network or capacity contained in a franchise existing on the
125 effective date of sections 67.2675 to 67.2715 shall continue until the
126 term of the franchise would have expired had it not been terminated
127 pursuant to sections 67.2676 to 67.2714, or until January 1, 2009,
128 whichever is earlier, and shall be limited to providing the network as
129 is on the effective date of sections 67.2675 to 67.2715.

67.2705. 1. A video service provider shall not deny access to
2 service to any group of potential residential subscribers because of the
3 race or income of the residents in the local area in which the group
4 resides.

5 2. It is a defense to an alleged violation of subsection 1 of this
6 section if the video service provider has met either of the following
7 conditions:

8 (1) Within three years of the date it began providing video
9 service under the provisions of sections 67.2675 to 67.2715, at least
10 twenty-five percent of the households with access to the provider's
11 video service are low-income households; or

12 (2) Within five years of the date it began providing video service
13 under the provisions of sections 67.2675 to 67.2715 at least thirty
14 percent of the households with access to the provider's video service
15 are low-income households.

16 3. If a video service provider is using telecommunication
17 facilities to provide video service and has more than one million
18 telecommunication access lines in this state, the provider shall provide
19 access to its video service to a number of households equal to at least
20 twenty-five percent of the households in the provider's
21 telecommunications service area in the state within three years of the
22 date it began providing video service pursuant to authorization under
23 sections 67.2675 to 67.2715 and to not less than fifty percent of such
24 households within six years. A video service provider is not required

25 to meet the fifty percent requirement provided in this subsection until
26 two years after at least thirty percent of the households with access to
27 the provider's video service subscribe to the service for six consecutive
28 months.

29 4. Each provider described in subsection 3 of this section shall
30 file an annual report with the franchising entities in which each
31 provider provides service and the public service commission regarding
32 the progress that has been made toward compliance with the provisions
33 of subsection 3 of this section.

34 5. Except for satellite service, a video service provider may
35 satisfy the requirements of this section through the use of alternate
36 technology that offers service, functionality, and content which is
37 demonstrably similar to that provided through the provider's video
38 service network and may include a technology that does not require the
39 use of any public right-of-way. The technology utilized to comply with
40 the requirements of this section shall include local public, education,
41 and government channels as required under section 67.2703 and
42 messages over the emergency alert system as required under section
43 67.2683.

44 6. A video service provider may apply to the public service
45 commission for a waiver of or an extension of time to meet the
46 requirements of this section if one or more of the following apply:

47 (1) The inability to obtain access to public and private rights-of-
48 way under reasonable terms and conditions;

49 (2) Developments or buildings not being subject to competition
50 because of existing exclusive service arrangements;

51 (3) Developments or buildings being inaccessible using
52 reasonable technical solutions under commercially reasonable terms
53 and conditions;

54 (4) Natural disasters; or

55 (5) Factors beyond the control of the video service provider.

56 7. The public service commission may grant the waiver or
57 extension only if the provider has made substantial and continuous
58 effort to meet the requirements of this section. If an extension is
59 granted, the public service commission shall establish a new
60 compliance deadline. If a waiver is granted, the public service
61 commission shall specify the requirement or requirements waived.

62 8. Notwithstanding any other provision of sections 67.2675 to
63 67.2715, a video service provider using telephone facilities to provide
64 video service shall not be obligated to provide such service outside the
65 provider's existing telephone exchange boundaries.

66 9. Except as otherwise provided in sections 67.2675 to 67.2715, a
67 video service provider shall not be required to comply with, and a
68 franchising entity may not impose or enforce, any mandatory build-out
69 or deployment provisions, schedules, or requirements except as
70 required by this section.

71 10. Any franchising entity in which a video service provider
72 operates may file a complaint in a court of competent jurisdiction
73 alleging a violation of subsection 1 or 3 of this section. The court shall
74 act on such complaint in accordance with section 67.2711.

 67.2707. 1. A video service provider shall be subject to the
2 provisions of sections 67.1830 to 67.1846 and chapter 229, RSMo, and
3 shall also be subject to the provisions of section 227.240, RSMo,
4 applying to cable television companies, and to all reasonable police
5 power-based regulations of a political subdivision regarding the
6 placement, screening, and relocation of facilities, including, but not
7 limited to:

8 (1) Requirements that the video service provider provide
9 landscaping to screen the placement of cabinets or structures from
10 public view consistent with the location chosen;

11 (2) Requirements that the video service provider contact the
12 nearby property owners to communicate what work will be done and
13 when;

14 (3) Requiring alternate placement of facilities, or prescribing the
15 time, method, and manner of such placement, when it is necessary to
16 protect the public right-of-way or the safety of the public,
17 notwithstanding the provisions of sections 67.1830 to 67.1846;

18 (4) Requirements that cabinets be removed or relocated at the
19 expense of the video service provider when necessary to accommodate
20 construction, improvement, or maintenance of streets or other public
21 works.

22 2. A political subdivision may not impose the following
23 regulations on video service providers:

24 (1) Requirements that particular business offices or portions of

25 a video service network be located in the political subdivision;

26 (2) Requirements for political subdivision approval of transfers
27 of ownership or control of the business or assets of a video service
28 provider's business, except that a political subdivision may require that
29 such entity maintain current point of contact information and provide
30 notice of a transfer within a reasonable time; and

31 (3) Requirements concerning the provisioning of or quality of
32 customer services, facilities, equipment or goods in-kind for use by the
33 political subdivision or any other video service provider or public
34 utility.

67.2709. Every holder of a video service authorization shall, with
2 respect to its construction practices and installation of equipment,
3 comply with all applicable sections of the National Electric Safety
4 Code.

67.2711. In the event a video service provider is found by a court
2 of competent jurisdiction to be in noncompliance with the requirements
3 of sections 67.2675 to 67.2715, the court shall issue an order to the video
4 service provider directing a cure for such noncompliance within a
5 specified reasonable period of time. If the video service provider meets
6 the requirements of the provisions of sections 67.2675 to 67.2715 within
7 the court ordered period of time, the court shall dismiss the claim of
8 noncompliance.

67.2714. Sections 67.2675 to 67.2715 shall apply to any franchise
2 in effect on the effective date of sections 67.2675 to 67.2715, to the
3 extent specifically provided in sections 67.2675 to 67.2715.

67.2715. Notwithstanding the provisions of section 1.140, RSMo,
2 to the contrary, the provisions of this act shall be nonseverable, and if
3 any provision is for any reason held to be invalid, such decision shall
4 invalidate all of the remaining provisions of this act.

386.305. 1. The general assembly finds that the provision of VOIP
2 service free of regulation, regardless of the provider, is in the public
3 interest.

4 2. The public service commission shall not regulate or otherwise
5 exercise jurisdiction over VOIP service regardless of how the service
6 is classified by the Federal Communications Commission. Any decision
7 of the public service commission inconsistent with this section is
8 hereby preempted and rendered invalid. Such service shall nonetheless

9 be subject to the state's generally applicable business regulation and
10 deceptive trade practices and consumer protection laws, as enforced by
11 the appropriate state authority or through actions in the judicial
12 system. This subsection does not limit the availability to any party of
13 any remedy or defense under state or federal antitrust laws.

14 3. No political subdivision, as such term is defined in section
15 67.2677, RSMo, may directly or indirectly regulate the terms and
16 conditions, including, but not limited to, the operating systems,
17 qualifications, services, service quality, service territory, and prices,
18 applicable to or in connection with the provision of VOIP service.

19 4. (1) A provider of VOIP service and its officers, directors,
20 employees, vendors, and agents, shall have immunity or other
21 protection from liability of a scope and extent that is not less than the
22 scope and extent of immunity or other protection from liability that
23 any telecommunications company, and its officers, directors, employees,
24 vendors, or agents, have in this state under federal and state law
25 whether through statute, judicial decision, tariffs filed by such local
26 exchange company, or otherwise, including in connection with an act
27 or omission involving the release to a public service answering point,
28 emergency medical service provider or emergency dispatch provider,
29 public safety, fire service or law enforcement official, or hospital
30 emergency or trauma care facility of subscriber information related to
31 emergency calls or emergency services.

32 (2) No political subdivision of Missouri may impose any 911-
33 related fees, taxes, or surcharges on a provider of VOIP service that are
34 not also imposed by such political subdivision on telecommunications
35 companies. Such provider may recover such fees from its end users
36 and identify such fee and its amount as a separate line-item on the end
37 user's bill.

38 (3) No 911-related fees, taxes, or surcharges may be imposed on
39 a provider of VOIP service to the extent that such fees, taxes, or
40 surcharges are imposed on telecommunications companies or other
41 entity that furnishes such provider with connectivity to the public
42 switched telephone network or a public safety answering point.

43 5. For purposes of this section, "VOIP service" means
44 interconnected voice over Internet Protocol service as defined by the
45 Federal Communications Commission in Section 9.3 of Title 47 of the

46 Code of Federal Regulations.

Section B. Because of the need for streamlined statewide video franchise
2 agreements, section A of this act is deemed necessary for the immediate
3 preservation of the public health, welfare, peace and safety, and is hereby
4 declared to be an emergency act within the meaning of the constitution, and
5 section A of this act shall be in full force and effect upon its passage and
6 approval.

✓

Unofficial

Bill

Copy